Supreme Court of the United States.

No. 151.—October Term, 1903.

Ribas y Hijo, Appellant, vs. The United States. } Appeal from the District Court of the United States for the District of Porto Rico.

[May 16th 1904.]

Mr. Justice Harlan delivered the opinion of the Court.

This action was brought against the United States by J. Ribas y Hijo, a Spanish corporation, to recover the sum of ten thousand dollars as the value of the use of a certain merchant vessel taken by the United States in the Port of Ponce, Porto Rico, when that city was captured by the United States Army and Navy on July 28th 1898.

The vessel was kept and used by the Quartermaster's Department of the Army until some time in April 1899 when the War Department ordered its return to the owner, if all claim for use or damage for detention should be waived. Such conditional return was refused by the captain who claimed to be a part owner and with his crew he left the vessel.

Subsequently the consignees of the vessel were notified that it was at their disposal; that the Government was about to discharge those having it in care; and they were requested to put some one in control of it. This they declined to do, and the vessel was abandoned and in August 1899 was wrecked in a hurricane.

The vessel was never in naval custody nor condemned as prize. When seized it was a Spanish vessel, carried the Spanish flag, and its owner, captain and crew were all Spanish subjects. It did not come within any of the declared exemptions from seizure set forth in the Proclamation of the President of April 26th 1898. 30 *Stat.* 1770. A claim filed in the War Department in February 1900 for its use was rejected.

Such being the facts found, the court below, upon final hearing, dismissed the action upon the general ground that the vessel was properly seized as enemy's property, and its use was by the war power for war purposes.

A rehearing was asked and was denied, the court saying: "A rehearing is asked upon the ground that the court has found as a matter of fact that the use continued until in April 1899, and, as the protocol, followed by the President's proclamation, was dated August 12th 1898, the complainants should recover on a *quantum meruit* the value of the use of the

vessel between those dates. This was a seizure in time of war, and not in time of peace. It was, as has been said, a special case arising from the necessary operation of war, and the war power of the Government concluded it was necessary to take and use the property. Even conceding that the seizure did not terminate all right of the Spanish owner in the property, or to any use of it, yet the protocol and proclamation did not end the war. The protocol worked a mere truce. The President had not the power to terminate the war by treaty without the advice or consent of the Senate of the United States. If a treaty be silent as to when it is to become effective, the weight of authority is that it does not become so until ratified, and this was not done until in April 1899, and the war did not end by treaty until then, and all the use made by the Government of the vessel was justified by the rules of law and international law without compensation."

1. By the 35th section of the act of Congress of April 12th 1900, *c.* 191, temporarily providing revenues and civil government for Porto Rico, it was declared that "writs of error and appeals from the final decisions of the Supreme Court of Porto Rico and the District Court of the United States shall be allowed and may be taken to the Supreme Court of the United States in the same manner and under the same regulations and in the same cases as from the Supreme Courts of the Territories of the United States; and such writs of error and appeal shall be allowed in all cases where the Constitution of the United States, or a treaty thereof, or an act of Congress is brought in question and the right claimed thereunder is denied; . ." As the value of the matter here in dispute exceeds the sum of five thousand dollars, and as the final judgment, in a like case in the Supreme Court of one of the Territories of the United States, could be re-examined here, we have jurisdiction of the present writ of error from the District Court of the United States for Porto Rico. 23 *Stat.* 443, *c.* 355; 31 *Stat.* 85, *c.* 191, §§ 34, 35; *Royal Insurance Co.* v. *Martin*, 192 *U. S.* 149.

2. This action, we have seen, was brought to recover the value of the use of a vessel belonging to Spanish subjects and taken by our Army and Navy during the war with Spain, and used by the Quartermaster's Department of the Army.

By the above act of April 12th 1900 the court below was given, "in addition to the ordinary jurisdiction of District Courts of the United States, jurisdiction of all cases cognizant in the Circuit Courts of the United States, and shall proceed in the same manner as a Circuit Court." 31 *Stat.* 85, *c.* 191, § 34. If, therefore, this action could have been brought in a Circuit Court of the United States, it was within the cognizance of the court below. We must, then, look to the act of March 3d 1889, commonly

known as the Tucker act, and which provides for the bringing of suits against the Government of the United States. 24 *Stat.* 505, *c.* 359.

By the first section of that act it is provided that the Court of Claims shall have jurisdiction to hear and determine "all claims founded upon the Constitution of the United States or any law of Congress, except for pensions, or upon any regulation of an Executive Department, or upon any contract, expressed or implied, with the Government of the United States, or for damages, liquidated or unliquidated, in cases not sounding in tort, in respect of which claims the party would be entitled to redress against the United States either in a court of law, equity or admiralty if the United States were suable. . ." The second section provides that "the District Courts of the United States shall have concurrent jurisdiction with the Court of Claims as to all matters named in the preceding section where the amount of the claim does not exceed one thousand dollars, and the Circuit Courts of the United States shall have such concurrent jurisdiction in all cases where the amount of such claim exceeds one thousand dollars and does not exceed ten thousand dollars." The fifth section is in these words: "That the plaintiff in any suit brought under the provisions of the second section of this act shall file a petition, duly verified, with the clerk of the respective court having jurisdiction of the case, and in the district where the plaintiff resides. Such petition shall set forth the full name and residence of the plaintiff, the nature of his claim, and a succinct statement of the facts upon which the claim is based, the money or any other thing claimed, or the damages sought to be recovered and praying the court for a judgment or decree upon the facts and law."

The Government insists that the requirement in that act, that the petition shall be filed "in the district where the plaintiff resides," precludes a suit against the United States by any person, natural or corporate, residing out of the country. We express no opinion upon that question, as there are other grounds upon which we may satisfactorily rest our decision.

The present suit finds no sanction in the above act even if the plaintiff were not a foreign corporation. Its claim is not founded on the Constitution of the United States, or on any act of Congress, or on any regulation of an Executive Department. Nor can it be said to be founded on contract, express or implied. There is no element of contract in the case; for nothing was done by the United States, nor anything said by any of its officers, from which could be implied an agreement or obligation to pay for the use of the plaintiff's vessel. According to the established principles of public law, the owners of the vessel, being Spanish subjects, were to be deemed enemies, although not directly connected with military operations. The vessel was therefore to be deemed enemy's property. It was seized as

property of that kind, for purposes of war, and not for any purposes of gain. The case does not come within the principle announced in *United States* v. *Great Falls Mfg. Co.*, 112 *U. S.* 645, 656, where this court said that "the United States, having by its agents, proceeding under the authority of an act of Congress, taken the property of claimant for public use, are under an obligation, imposed by the Constitution, to make compensation. The law will imply a promise to make the required compensation where property, to which the Government asserts no title, is taken pursuant to an act of Congress as private property to be applied for public uses. Such an implication being consistent with the constitutional duty of the Government, as well as with common justice, the claimant's cause of action is one that arises out of implied contract within the meaning of the statute which confers jurisdiction upon the Court of Claims of actions founded upon any contract, expressed or implied, with the Government of the United States." The seizure, which occurred while the war was flagrant, was an act of war occurring within the limits of military operations. The action, in its essence, is for the recovery of damages, but as the case is one sounding in tort, no suit for damages can be maintained under the statute against the United States. It is none the less a case sounding in tort because the claim is in form for the use of the vessel after actual hostilities were suspended by the protocol of August 12th 1898. A state of war did not in law cease until the ratification in April 1899 of the treaty of peace. "A truce or suspension of arms," says Kent, "does not terminate the war, but it is one of the *commercia belli* which suspends its operations. . . At the expiration of the truce, hostilities may recommence without any fresh declaration of war." 1 *Kent*, 159, 161. If the original seizure made a case sounding in tort, as it undoubtedly did, the transaction was not converted into one of implied contract because of the retention and use of the vessel pending negotiations for a treaty of peace. Besides, the treaty of peace between the two countries provided that "the United States and Spain mutually relinquish all claims for indemnity, national and individual, of every kind, of either Government, or of its citizens or subjects, against the other Government, that may have arisen since the beginning of the late insurrection in Cuba and prior to the exchange of ratifications of the present treaty, including all claims for indemnity for the cost of the war. The United States will adjudicate and settle the claims of its citizens against Spain relinquished in this article." This stipulation clearly embraces the claim of the plaintiff—its claim against the United States for indemnity having arisen prior to the exchange of ratifications of the treaty of peace with Spain.

We may add that even if the act of March 1877, standing alone, could be construed as authorizing a suit of this kind, the plaintiff must fail; for,

it is well settled that in case of a conflict between an act of Congress and a treaty—each being equally the supreme law of the land—the one last in date must prevail in the courts. *The Cherokee Tobacco*, 11 *Wall.* 616, 621; *Whitney* v. *Robertson*, 124 *U. S.* 190, 194; *United States* v. *Lee Yen Tai*, 187 *U. S.* 213, 221.

It results that the judgment below dismissing the action must be affirmed.

It is so ordered.

True copy.

Test:

Clerk Supreme Court, U. S.